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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LOUISIANA MUNICIPAL POLICE
EMPLOYEES RETIREMENT
SYSTEM,

Plaintiff,

v.

STEPHEN A. WYNN, et al.,

Defendants.

2:12-CV-509 JCM (GWF)

ORDER

Presently before the court is a request for judicial notice by defendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Mark D. Schorr, Alvin V. Shoemaker, D. Boone Wayson, Stephen A. Wynn, and Allan Zemanin support of their reply memorandum (doc. # 137) regarding their motion to dismiss (doc. # 130). (Doc. # 139).

Also before the court is plaintiffs' motion to strike material from defendants' reply memorandum or alternatively for leave to file a sur-reply. (Doc. # 144). Defendants filed a response in opposition (doc. # 146), and plaintiffs filed a reply (doc. # 147).

Defendants request that this court take judicial notice of the following:

(1) Wynn Resorts Limited Form 8-K (filed July 8, 2013);

(2) a hearing transcript regarding the United States' motion to intervene as well as the second amended counterclaim of Aruze USA, Inc and Universal Entertainment Corp. in *Wynn Resorts, Ltd. V. Okada et al.*, Case No. A-12-656710-B, Eighth Judicial District Court, Clark County Nevada;

1 (3) a press release issued by the Republic of the Philippines Department of Justice
2 regarding an investigation into violations of investment laws;

3 (4) portions of MGM Resorts International Form 10-K (filed March 1, 2013);

4 (5) portions of Las Vegas Sands Corp. Form 10-K (filed March 1, 2013);

5 (6) Wynn Resorts, Limited Form DEF 14A (filed March 26, 2013).

6 (Doc. # 139: Attachments 1-7).

7 Plaintiffs argue that it would be improper for the court to take judicial notice of the above
8 listed documents, and consequently that the portions of defendants' reply that depend upon those
9 documents should be stricken. Alternatively, plaintiffs argue that sections relating to these
10 documents in defendants' reply memorandum constitute entirely new argumentation. and thus should
11 be stricken as procedurally improper. Finally, plaintiffs request that they be granted leave to file a
12 sur-reply should the court choose not to strike these portions of defendants' reply memorandum.

13 Administrative filings as well as orders and decisions made by other courts can be proper
14 subjects of judicial notice. *See Bryant v. Carleson*, 444 F.2d 353, 357-58 (9th Cir. 1971). However,
15 the court cannot and will not take judicial notice of facts contained in such documents that are or
16 could reasonably be disputed. *See Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001). The
17 above-listed documents all contain information that contradict key elements of plaintiffs' claims in
18 this case. As these are assertions of fact that are clearly in dispute, it is not proper for the court to
19 take judicial notice of these documents or to include them within its consideration of the pending
20 motion to dismiss. Accordingly, the request for judicial notice will be denied.

21 Under Fed. R. Civ. P. 12(f), "[t]he court may strike from a pleading an insufficient defense
22 or any redundant, immaterial, impertinent, or scandalous matter." "Motions to strike are generally
23 regarded with disfavor. . . ." *Mag Instrument, Inc. v. JS Prods., Inc.*, 595 F.Supp.2d 1102, 1106
24 (C.D. Cal. 2008). The function of a motion to strike pursuant to Rule 12(f) is avoidance of "the
25 expenditure of time and money that must arise from litigating spurious issues by dispensing with
26 those issues prior to trial [.]" *Fantasy, Inc. v. Fogarty*, 984 F.2d 1524, *rev'd on other grounds*, 510
27 U.S. 517 (1994) (internal quotations omitted).

1 “Given their disfavored status, courts often require a showing of prejudice by the moving
2 party before granting the requested relief.” *Id.* (internal citations and quotations omitted). “Whether
3 to grant a motion to strike lies within the sound discretion of the district court.” *Roadhouse v. Las*
4 *Vegas Metro. Police Dep’t*, 290 F.R.D. 535 (D. Nev. 2013).

5 Because the declines to take judicial notice of the documents presented by defendants, the
6 factual claims within these documents cannot warrant the dismissal of plaintiffs’ complaint. In
7 considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), “all factual
8 allegations set forth in the complaint are taken as true and construed in the light most favorable to
9 plaintiffs.” *Lee v. City of Los Angeles*, 250 F.3d 668, 676 (9th Cir. 2001) (internal quotations
10 omitted). Thus, any dispute of fact will be resolved in plaintiffs’ favor with regard to defendants’
11 motion to dismiss. As a result defendants’ factual allegations have no possibility of causing prejudice
12 to plaintiffs at this stage in the litigation. Therefore the court will not grant plaintiffs leave to file a
13 sur-reply and will deny the motion to strike.

14 Accordingly,

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that defendants’ request for
16 judicial notice (doc. # 139) be, and at the same time hereby is, DENIED.

17 IT IS FURTHER ORDERED that plaintiffs’ motion to strike (doc. # 144) is DENIED.

18 DATED November 22, 2013.

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21 UNITED STATES DISTRICT JUDGE